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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THE BARTHEL CO., INC.,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB Nos: 522 and 528

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being the appeal of two civil penalties of \$250.00 each
for alleged smoke emissions in violation of respondent's Regulation I;
having come on regularly for hearing before the Pollution Control
Hearings Board on the 28th day of June, 1974, at Tacoma, Washington;
and appellant, The Barthel Co., Inc., appearing through its president
and chief executive officer, T. H. Van Ryck and respondent, Puget Sound
Air Pollution Control Agency, appearing through its attorney, Keith D.
McCoffin; and Board member present at the hearing being Walt Woodward;
and the Board having considered the transcript, exhibits, records and

1 files herein and having entered on the 13th day of August, 1974, its
2 proposed Findings of Fact, Conclusions of Law and Order, and the Board
3 having served said proposed Findings, Conclusions and Order upon all
4 parties herein by certified mail, return receipt requested and twenty
5 days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the
8 premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 13th day of
11 August, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 16th day of Sept, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 WALT WOODWARD, Chairman

18 
19 W. A. GISSBERG, Member
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26 Final Findings of
27 Fact, Conclusions of
Law and Order

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 19th day of July, 1974, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. T. H. Van Ryck, President
The Barthel Co., Inc.
P. O. Box 1025
Tacoma, Washington 98401

Mr. Keith D. McGoffin
Burkey, Marsico, Roval, McGoffin,
Turner and Mason
818 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

LaRene Barlin
LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THE BARTHEL CO., INC.,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB Nos. 522 and 528

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two civil penalties of \$250.00 each for alleged smoke emissions in violation of Respondent's Regulation I, came before the Pollution Control Hearings Board, (Walt Woodward, presiding officer) at a formal hearing in Tacoma, at 1:30 p.m., June 28, 1974.

Appellant was represented by its president and chief executive officer, T. E. Van Ryck; Respondent appeared through Keith D. McGoffin. Gene Barker, Olympia court reporter, recorded the testimony.

EXHIBIT A

1 Having heard the evidence and seen the exhibits, and being fully
2 advised, the Board makes the following

3 FINDINGS OF FACT

4 I.

5 Appellant is the Barthel Company, Inc., formerly known as the
6 Barthel Chemical Construction Company. Appellant is located at
7 2434 E. 11th Street in Tacoma. At all relevant times in this matter
8 Appellant owned and operated an oil-fired boiler on its premises.

9 II.

10 Appellant has had four prior notices of violation for excess
11 boiler stack smoke emissions. From these prior violations, only one civil
12 penalty was assessed. This penalty, assessed at \$50.00, arose from
3 the fourth notice of violation. Appellant paid this penalty.

14 III.

15 On September 21, 1973 at approximately 9:30 a.m. while inspecting
16 his area of responsibility Victor L. Aguilar, Jr., a duly qualified
17 air pollution inspector for the Puget Sound Air Pollution Control
18 Agency, observed black smoke emitting from Appellant's boiler
19 stack. He took photographs of the emissions. Following this, he
20 took observations of the emission with the sun at his back at a
21 distance of not more than 50 feet from the emission. He recorded a
22 reading of 3-4 on the Ringelmann Chart for a period of 5 1/2 minutes
23 of 8 minutes observed. He thereafter issued Notice of Violation No. 8449
24 (Respondent's Exhibit R-11) to Appellant for violation of Section 9.03(a)
25 of Respondent's Regulation I (Respondent's Exhibit R-16).

6 FINDINGS OF FACT,
CONCLUSIONS OF LAW
27 AND ORDER

1 IV.

2 From the Notice of Violation No. 8449 was assessed a Notice of
3 Civil Penalty No. 1192 (Appellant's Exhibit A-1) for an amount of
4 \$150.00 pursuant to Respondent's Regulation I. This matter concerning
5 Civil Penalty No. 1192 was assessed by the Board on February 7, 1974
6 subject to the issuance of a new Notice of Civil Penalty reflecting
7 Appellant's correct identification at the request of the Appellant.
8 PCHB No. 480 (Appellant's Exhibit A-2). Appellant orally mentioned to
9 Respondent's agents Messrs. Cox and Aguilar that the smoke emission
10 problem would be remedied.

11 V.

12 On January 9, 1974 at approximately 11:00 a.m., Victor L. Aguilar,
13 Jr., again noticed black smoke emitting from Appellant's boiler stack.
14 He took a photograph of the emission and thereafter made an observation
15 of the emission in a manner as hereinbefore described. He recorded a
16 reading of 4-5 on the Ringelmann Chart for a period of eight minutes of
17 16 minutes observed. He thereafter issued Notice of Violation No. 9215
18 (Respondent's Exhibit R-14) to Appellant for violation of Section 9.03(a)
19 of Respondent's Regulation I.

20 VI.

21 From the Notice of Violation No. 9215 was assessed a Notice of
22 Civil Penalty No. 1335 (Respondent's Exhibit R-14) for an amount of
23 \$250.00 pursuant to Respondent's Regulation I, which is one matter of
24 this appeal. PCHB No. 522.

25 VII.

26 On February 8, 1974 Respondent reissued a Notice of Civil Penalty

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 No. 1399 (Respondent's Exhibit R-12) based on Notice of Violation
2 No. 8449 for \$250.00 which is the second subject of this appeal.
3 PCHB No. 528. Testimony explained the increase in the penalty of \$100.00
4 as being due to consideration of 1) an intervening civil penalty notice
5 (Notice of Civil Penalty No. 1335), (2) the Appellant's previous record
6 of violations and penalties, and 3) the supposition that no corrections
7 were being made.

8 VIII.

9 Appellant knew of its boiler emission problem as early as
10 November, 1970. Because Appellant could find no one who would
11 assure it that the smoke would be eliminated, Appellant made no
12 further efforts to improve its boiler operation until recently. In
13 February, 1974, Appellant completed an improvement which, an engineering
14 company assured, would eliminate emissions. The cost of this
15 improvement was approximately \$1,500.00 and involved installing a
16 new burner system. Although Appellant assigns blame for the emissions
17 to the type of crude oil it was recently forced to use, the violations
18 prior to the matter at hand indicate that the problem lay in Appellant's
19 equipment. It was aware of the emission problem but did nothing to
20 improve the system. The evidence shows that Appellant's problem is
21 one occurring only during the fall and winter months due to the
22 weather conditions.

23 IX.

24 Section 9.03(a) of Respondent's Regulation I provides in part:

25 "(a) It shall be unlawful for any person to
26 cause or allow the emission of any air
contaminant for a period or periods

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 aggregating more than three (3) minutes
2 in any one hour, which is:

- 3 (1) Darker in shade than that
4 designated as No. 2 (40%
5 density) on the Ringelmann
6 Chart as published by the
7 United States Bureau of
8 Mines. . ."

9 Section 3.29 of Regulation I authorizes Respondent to levy a civil
10 penalty of not more than \$250.00 for any violation of Regulation I.

11 X.

12 Any Conclusion of Law hereinafter deemed to be a Finding of
13 Fact is herewith adopted as same.

14 From these Findings, the Pollution Control Hearings Board comes
15 to these

16 CONCLUSIONS OF LAW

17 I.

18 The Board has jurisdiction over the persons and subject matter
19 of these appeals.

20 II.

21 There was a violation caused by Appellant of Section 9.03(a)(1)
22 of Regulation I on September 21, 1973.

23 III.

24 There was a violation caused by Appellant of Section 9.03(a)(1)
25 of Regulation I on January 9, 1974.

26 IV.

27 Appellant has shown no substantial reasons for mitigation of
the penalties.

FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

V.

The Pollution Control Hearings Board Order in the matter of Barthel Chemical Construction Co. vs. Puget Sound Air Pollution Control Agency, PCHB No. 480, contemplated the correction of the Notice of Civil Penalty No. 1192 to correctly identify the Appellant. The Board holds that this Order is controlling for the September 21, 1973 violation and the penalty as then assessed, i.e., \$150.00, now applies.

VI.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal in the matter of PCHB No. 528 upon Notice of Civil Penalty No. 1399 is denied. The \$250.00 penalty is modified to \$150.00.

The appeal in the matter of PCHB No. 522 based upon Notice of Civil Penalty No. 1335 is denied. The \$250.00 penalty is affirmed except that \$125.00 shall be suspended for a period of twelve (12) months from the date that this Order becomes final. As a condition of this suspension in this interim period, Appellant shall cause no notice of violation to issue for emissions from its boiler stack. If such condition be breached the suspended sum shall become immediately due and payable.

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 DONE at Lacey, Washington, this 13th day of August, 1974.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member
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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER